

Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Mansur Alam

Civil Revision No. 2954 of 2017

In the Matter of:

Rowshan Hoque.

.....Petitioner.

Versus

Rahamuddin alias Rahimuddin and others.

... Opposite parties.

Mr. Jamiruddin Sircar, Advocate with

Mr. Md. Ekramul Islam, Advocate

...For the petitioner.

Mr. Md. Sherder Abul Hossain, Advocate

....For the opposite parties.

**Heard on 19.01.2025, 21.01.2025 and
Judgment on 23.01.2025.**

Sheikh Abdul Awal, J.

This Rule was issued calling upon the opposite party Nos. 1-7 to show cause as to why the order dated 11.06.2017 passed in Civil Revision No. 32 of 2016 by the learned District Judge, Gazipur disallowing the revision thereby affirming the order dated 04.09.2016 passed in Title Suit No. 184 of 1999 by the learned Joint District Judge, 1st. Court, Gazipur allowing the application for addition of party should not be set-aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The relevant facts briefly are that the petitioner as plaintiff instituted Title Suit No. 184 of 1999 in the Court of the than Subordinate Judge, 1st Court, Gazipur for Specific performance of the contract impleading the opposite party Nos. 10 to 18 as defendants. Defendant Nos. 1 and 2 entered appearance in the suit and filed written statement denying all the material allegations made in the plaint contending, inter-alia, that the suit is not maintainable in its present form and manner. The suit is barred by limitation. The plaintiff filed the suit on false averments and as such, the suit is liable to be dismissed.

Thereafter, while the suit was in progress the opposite party Nos. 1 to 7 as applicants filed an application under Order 1 Rule 10(2) of the Code of the Civil Procedure for addition of parties as defendant Nos. 4 to 10, stating, inter-alia, that the applicants have right, title and interest in the suit land and as such, they are necessary party in the suit for proper adjudication of the dispute.

The learned Joint District Judge, 1st. Court, Gazipur after hearing the parties by order dated 04.09.2016 allowed the prayer for addition of parties. Against which the plaintiff filed Civil Revision No. 32 of 2016 under section 115(2) of the Code of the Civil Procedure before the learned District Judge, Gazipur, who after hearing the parties by his order dated 11.06.2017 disallowed the Civil Revision and affirmed the order of the trial Court.

Aggrieved plaintiff then preferred this revision application and obtained the present rule.

Mr. Jamiruddin Sircar along with Mr. Md. Ekramul Islam the learned Advocate appearing for the plaintiff petitioner submits that both the Courts bellow under misconception of law and facts most illegally allowed the application for addition of party without

assigning any reasons which occasioned a failure of justice. The learned Advocate further submits that admittedly the plaintiff filed the suit for specific performance of contract in which the present applicants are not party to that contract, thereby they are stranger to the suit and in the attending facts and circumstance of the case they are not at all necessary party in the dispute although the learned Subordinate Judge without assigning any reason most illegally allowed the application for addition of party by order dated 04.09.2016 and thereafter the same was affirmed in revision by the impugned judgment and order dated 11.06.2017 beyond the scope of law. The learned Advocate to fortify his submission has relied on the decisions reported in 51 DLR (1999) 341 and 14 BLD (AD) 16.

Mr. Sherder Abul Hossain, the learned Advocate appearing on behalf of the opposite party Nos. 1-7, on the other hand, supports the impugned judgment.

Having heard the learned Advocates for both the parties and having gone through the materials on record including the orders of two Courts bellow, now the only question that calls for our consideration in this case is whether the trial Court as well as the Revisional Court bellow committed any wrong in allowing the application for addition of party in a suit for specific performance of contract.

On scrutiny of the record, it appears that the petitioner Rowshan Hoque as plaintiff instituted Title Suit No. 184 of 1999 impleading the defendants for specific performance of contract and thereafter, the defendant Nos. 1 and 2 entered appearance in the suit and filed written statement denying the material allegation made in the plaint and thereafter, while the suit was in progress the present opposite party Nos. 1 to 7 as third party applicants filed an application for addition of

party. The learned trial Judge after hearing the parties by a single line allowed the application for addition of party stating that- “সার্বিক পর্যালোচনায় দেঃ কাঃ বিঃ আইনের ১ আদেশের ১০(২) নিয়মে পক্ষভুক্তির প্রার্থনায় দাখিলী দরখাস্তটি দরখাস্তটি দরখাস্ত বর্ণিত কারনে শুনানী অস্তে ন্যায় বিচারের স্বার্থে মঞ্জুর করা হলো।”

On revision, the learned District Judge, Gazipur affirmed the said order by the impugned judgment and order dated 11.06.2017 on the finding that-“ উল্লেখিত পক্ষভুক্তিতে মোকদ্দমার ন্যায় বিচার বিঘ্নিত বা রিভিশনকারীর তেমন কোন ক্ষতি হবে তা দেখা যায় না। তাই বিজ্ঞ নিম্ন আদালত তাঁর তর্কিত আদেশে যেভাবে পক্ষভুক্তির প্রার্থনা মঞ্জুর করেছেন অআইনানুগ বা যুক্তিহীন ভাবে করেছেন তা দেখা না যাওয়ায় দেখা যায় যে, তর্কিত আদেশটি বহাল যোগ্য তা রদ ও রহিত যোগ্য নহে।”

Rule 10 CPC empowers the Court to add a person who ought to have been joined or whose presence before the Court may be necessary in order to enable the Court for effectually and completely to adjudicate upon or settle all the questions involved in the case. We have already noticed that the plaintiff-petitioner filed the suit for specific performance of contract in which the applicants are not party to that contract.

We, however, want to make it clear that question of title and possession of the parties cannot be decided in this case. Since the applicant-opposite parties are not party to the agreement of sale, so it cannot be said that without their presence the dispute as to specific performance cannot be determined in accordance with law. Therefore, they are not necessary party to the suit although in deciding this simple matter both the Courts bellow wrongly allowed the prayer for addition of party which does not deserve to be sustained. On a query from the Court Mr. Sharder Abul Hossain, however, in his usual frankness concedes the legal position of the matter.

In the case of Jamir Ahmed Vs. Siddique Ahmed reported in 14 BLT(AD) 16 wherein it has been held that-

“We have considered the submissions made by the learned Advocate-on-record and perused the materials on record. There is no dispute that the respondent No. 1 filed the instant suit for specific performance of contract praying for a decree against the respondent Nos.2 to 4 directing them to execute and register kabala in favour of the plaintiff. The decree if any shall be binding on the defendants of the suit. In a suit for specific performance of contract the claim of title of a third party cannot be considered and as such the plea of the petitioner that having title in the suit property he is required to be impleaded as defendant does not inspire us at all to interfere in the matter. Moreover it is not denied that the petitioner already filed a separate suit being Other Suit No. 316 of 1990 and he can, therefore, fight for adequate reliefs in the said suit for protecting his right or title, if any, in the suit property. In consideration of the materials on record we do not find that the petitioner is a necessary proper party in the instant suit.”

In the case of Golam Kader being dead his heirs; Nurun Nahar Begum and others Vs. Abdul Khaleque Choukder and others reported in 43 DLR (AD) 107 wherein it has been held that-

“ From the application for addition of party it appears that the present appellants are claiming by their alleged purchase a small fraction of the total land involved in the present suit. Their Title Suit No. 7 of 1969 involves a small fraction of the present suit land. The learned Single Judge of the High Court Division found that appellant Nos. 1 and 2 have not made any specific averments to the

effect that they are directly interested in any manner in the suit land. The present appellants are not claiming through the defendants of the present suit. They have set up an independent title of their own. Their averments in the application for addition of party disentitle them to be included within the framework of the present suit. That will convert the present suit for specific performance of contract into a suit for determination of title which is not permissible in law. The learned Single Judge of the High Court Division rightly found that the present appellants are not necessary parties for complete and effectual adjudication of the issues involved in the present suit. The learned Single Judge of the High Court Division has also observed in his judgment that the appellants may file an application for analogous hearing of Title Suit No. 7 of 1969 with the present suit, if they so desire. Consequently, this appeal is dismissed without any order as to costs.

From a reading of the above quoted decision of our Apex court we find a clear view of law as it stands today that in a suit for specific performance of contract it is not permissible to adjudicate on the question of title of stranger to the contract who need not therefore be made a party to such a suit.

In the given facts and circumstances of the case and the uniform decisions of the highest Court as cited above, we have no hesitation to hold that the instant Rule must succeed. All the questions of title of the parties are kept open in the event of any approach is made by the parties in appropriate suit.

In the result, the Rule is made absolute. The impugned judgment and order dated 11.06.2017 passed in Civil Revision No. 32 of 2016

by the learned District Judge, Gazipur discharging the revision and allowing the order dated 04.09.2016 passed in Title Suit No. 184 of 1999 passed by the learned Joint District Judge, 1st. Court, Gazipur allowing the application for addition of parties as defendant Nos. 4-10 are hereby set-aside.

Since the suit is an old one of 1999, the trial Court concerned is directed to hear and dispose of the suit as early as possible preferably within 06(six) months from the date of the receipt of this judgment.

Let a copy of this judgment be communicated to the Courts concerned at once.

Md. Mansur Alam, J:

I agree.